

ESTTA Tracking number: **ESTTA562056**

Filing date: **09/30/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92053501
Party	Plaintiff Christian M. Ziebarth
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Filer's Name	Kelly K. Pfeiffer
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Signature	/Kelly K. Pfeiffer/
Date	09/30/2013
Attachments	P's Notice of Reliance - Disc Rsps (5 of 6).pdf(5308511 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Christian M. Ziebarth,
an individual residing in California,
Petitioner,

v.

Del Taco, LLC
a California limited liability company,
Respondent.

Cancellation No. 92053501

PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS (NOS. 1-17)

Pursuant to the Rules of Practice of the United States Patent and Trademark Office ("PTO"), and the applicable Federal Rules of Civil Procedure ("FRCP"), Del Taco, LLC ("Del Taco"), is hereby required to admit or deny, in writing and under oath, each of the following Requests for Admissions.

DEFINITIONS

The following definitions and instructions shall apply to each of the Requests herein:

1. The terms or words "Del Taco" and "Respondent" shall mean Del Taco, LLC, and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company either within the United States or a foreign country.

2. The term or word "NAUGLES" shall mean the trademark subject of U.S. Trademark Registration No. 1,043,729.

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3. The term or word "restaurant" shall mean any place where food or beverages are served to the public.

4. The terms or words "name" or "named" shall have their normal dictionary definition, namely, the word or words by which an entity, business or restaurant is designated.

5. The terms or words "own" or "owned" shall have their normal dictionary definition and refer to the relationship between the Respondent and any business, including but not limited to a restaurant, that is under the control of or financially connected to the Respondent, including but not limited to a business that is affiliated with, franchised, leased, licensed, or operated by the Respondent.

6. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."

7. The use of the singular form of any word also includes the plural and vice versa.

GENERAL INSTRUCTIONS

1. If you claim that any information requested is privileged, please provide all information falling within the scope of the Request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the author of the document, if applicable;
- c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed;
- d. the date of the information or document;
- e. the type of information or document (e.g., letter, memorandum, etc.); and

f. the general subject matter of the information or document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

2. Del Taco's responses to the following Requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the FRCP.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that as of December 31, 1995, Respondent did not own a restaurant named "Naugles" in the United States.

REQUEST FOR ADMISSION NO. 2:

Admit that as of December 31, 1996, Respondent did not own a restaurant named "Naugles" in the United States.

REQUEST FOR ADMISSION NO. 3:

Admit that as of December 31, 1997, Respondent did not own a restaurant named "Naugles" in the United States.

REQUEST FOR ADMISSION NO. 4:

Admit that as of December 31, 1998, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 5:

Admit that as of December 31, 1999, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 6:

Admit that as of December 31, 2000, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 7:

Admit that as of December 31, 2001, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 8:

Admit that as of December 31, 2002, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 9:

Admit that as of December 31, 2003, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 10:

Admit that as of December 31, 2004, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 11:

Admit that as of December 31, 2005, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 12:

Admit that as of December 31, 2006, Respondent did not own a restaurant open to the public named "Naugles."

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REQUEST FOR ADMISSION NO. 13:

Admit that as of December 31, 2007, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 14:

Admit that as of December 31, 2008, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 15:

Admit that as of December 31, 2009, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 16:

Admit that as of December 31, 2010, Respondent did not own a restaurant open to the public named "Naugles."

REQUEST FOR ADMISSION NO. 17:

Admit that Respondent does not currently own a restaurant open to the public named "Naugles."

Respectfully submitted,

Dated: August 19, 2011

By: 


Susan M. Natland
Gregory B. Phillips
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614
Telephone: (949) 760-0404
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Attorneys for Petitioner, Christian M. Ziebarth

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS (NOS. 1-17)** upon Respondent's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid on August 19, 2011, addressed as follows:

April L. Besl, Esq.
DINSMORE & SHOHL LLP
255 East Fifth Street
Cincinnati, OH 45202

A handwritten signature in cursive script, reading "Betty De La Torre", is written over a horizontal line.

Betty De La Torre

11437935

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

CHRISTIAN M. ZIEBARTH,

Petitioner,

vs.

DEL TACO LLC

Respondent.

Reg. No. 1,043,729
Cancellation No. 92053501

DEL TACO LLC'S RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS
FOR ADMISSIONS NOS. 1-17

In accordance with Rule 36 of Federal Rules of Civil Procedure and Rule 407.03 of the Trademark Rules of Practice, Respondent Del Taco LLC ("Respondent" or "Del Taco") hereby submits the following Answers to Petitioner Christian M. Ziebarth's ("Petitioner" or "Ziebarth") First Set of Requests for Admissions Nos. 1-17.

PRELIMINARY STATEMENTS AND GENERAL OBJECTIONS

1. These responses are based upon the best information presently available but without prejudice to the right to make modified or additional answers should better or further information become available.

2. Except for the explicit facts stated herein, no incidental admissions are intended hereby. The fact that Respondent responded to any of the Requests for Admission is not an admission that it accepts or admits the existence of facts set forth or assumed by any Request, or that such responses constituted admissible evidence.

3. As this proceeding moves forward, Respondent anticipates other facts, documents or witnesses may be discovered or identified by it. Respondent reserves the

right to alter, supplement, amend, or otherwise modify these responses in any way at any time.

4. Respondent objects generally to Petitioner's admission requests to the extent that they:

- a. Seek information which is neither relevant to the subject matter of the pending action, nor reasonably calculated to lead to the discovery of relevant or admissible evidence;
- b. Seek information as to the knowledge of Respondent as an entity, where a complete response would require inquiries to be made of each and every one of Respondent's officers, agents, and employees;
- c. Are overly broad and unduly burdensome;
- d. Require Respondent to do more than that which is required under the Federal Rules of Civil Procedure and the Trademark Rules of Practice;
- e. Misstate or provide inaccurate or misleading description of facts.

5. Respondent specifically objects to the definition of "own" or "owned" put forth by Petitioner as overly broad, vague, and unduly burdensome and requires Respondent to speculate and answer as to independent third-party businesses.

SPECIFIC RESPONSES

Reg. for Admission. 1:

Admit that as of December 31, 1995, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is

used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See *e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 1995 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 2:

Admit that as of December 31, 1996, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See *e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken*

Corporation, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 1996 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 3:

Admit that as of December 31, 1997, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See *e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 1997 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 4:

Admit that as of December 31, 1998, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 1998 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 5:

Admit that as of December 31, 1999, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive.

Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See e.g. *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 1999 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 6:

Admit that as of December 31, 2000, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See

e.g. In re Azteca Restaurant Enterprises, Inc., 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 2000 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 7:

Admit that as of December 31, 2001, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See *e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 2001 Respondent did not itself own a restaurant named "Naugles" in the

United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 8:

Admit that as of December 31, 2002, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See *e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 2002 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 9:

Admit that as of December 31, 2003, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive. Respondent further objects to the extent this discovery request calls for Respondent to speculate as to the activities of independent third parties and/or speak on behalf of such independent third parties. Moreover, Respondent objects to the extent that this response is used against Respondent at all because there are many ways to use a mark in connection with restaurant services apart from usage of the mark as the name of the restaurant. See *e.g. In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209, 1211 (TTAB 1999) (menu specimen accepted as use of mark for restaurant services); *In re Kentucky Fried Chicken Corporation*, 170 USPQ 51, 54 (TTAB 1971) (usage of mark on bags carrying food identifies restaurant services). Without waiving the foregoing, Respondent admits that as of December 31, 2003 Respondent did not itself own a restaurant named "Naugles" in the United States but denies that no use of the name "Naugles" was made at that time in connection with restaurant services.

Req. for Admission. 10:

Admit that as of December 31, 2004, Respondent did not own a restaurant named "Naugles" in the United States.

ANSWER:

Respondent reiterates its General Objections and specifically objects to this discovery request as unreasonable, unduly burdensome, oppressive, and expensive.